CRITIQUE OF CORPORATE CRIMINAL LIABILITY IN NIGERIA: ECHOES FROM SELECTED JURISDICTIONS*

Abstract

The attribution of criminal responsibility to corporate entities remains one of the most complex frontiers of modern jurisprudence. Traditionally, Nigerian criminal law was anchored in the doctrine that criminal liability is personal, posing significant challenges to the attribution of criminal responsibility to corporate entities. Furthermore, with the exception of strict liability offences, there are serious questions of imputation of criminal liabilities based on the doctrines of actus reus and mens rea. In particular, there is no liability theory for determining the corporate mens rea of corporations. Most relevant Nigerian legislation and case laws do not recognise that a corporation can have mens rea[1]*. This paper introspects the question whether an artificial entity is capable of forming criminal intentions or actually committing a crime. This paper analyzes the statutory and judicial approaches to corporate criminal liability in Nigeria, with particular emphasis on the identification doctrine, vicarious liability, and strict liability offences under regulatory statutes. It further compares the Nigerian framework with models adopted in jurisdictions such as the United Kingdom, the United States, Australia and Canada, highlighting differences in attribution principles, enforcement mechanisms, and sanctions. Historically, the 'Identification Principle' dominated Common Law jurisdictions, limiting liability to the acts of the 'directing mind and will' of the company. However, the rise of transnational corporate crime, environmental disasters, and financial fraud has exposed the inadequacies of this narrow approach. This study employs a doctrinal research methodology and comparative approach to evaluate how these nations have transitioned toward broader models, such as the 'Vicarious Liability' model in the USA, the 'Corporate Culture' model in Australia, and the recent expansion of 'Failure to Prevent' offences in the UK. The findings reveal that while Nigeria's legal framework is evolving through the Companies and Allied Matters Act 2020 and the Cybercrimes Act*[2] *and other legislations, it lags in the practical enforcement of corporate culture liability compared to Australia and other examined models. The paper argues for a more coherent and robust legal regime, incorporating clearer attribution standards and enhanced sanctions, to strengthen corporate accountability and align Nigeria's approach with international best practices. The paper concludes by recommending a legislative shift in Nigeria toward a wholistic 'organizational fault' model to bridge the gap between corporate form and criminal accountability.*

Keywords: Corporate Entity, Crime, Criminal Liability, Identification Doctrine, Vicarious Liability, Strict Liability.

1. Introduction

Corporate crime was defined by an Australian criminologist John Braithwaite as 'the conduct of a corporation or employees acting on behalf of a corporation, which is proscribed and punishable by law'. Corporate crimes are defined as illegal acts, omissions or commissions by corporate organisations themselves as, social or legal entities or by official or employees of the corporations acting in accordance with the operative goals or standard operating procedures and cultural norms of the organization. Such principles are intended to benefit the corporations themselves[3]. The concept of corporate criminal liability challenges a fundamental legal axiom: *societas delinquere non potest* (a corporation cannot commit a crime). Historically, corporations, as artificial legal persons, were shielded from criminal prosecution, which required a *mens rea* (guilty mind)[4]. However, the ascendancy of the corporate form as the primary vehicle for economic activity, coupled with instances of corporate misconduct causing significant social,

***By Nkemjika Anthony ONYEWUCHI, LLB (Hons) (NAU), BL, LLM;** Lecturer, Tansian University, Umunya, Postgraduate Researcher of the Faculty of Law, Nnamdi Azikiwe University, Awka, Anambra State, Nigeria, Email: nkemjikaathony6@gmail.com, Tel: +2348139061127.

[1] N C Uzoka, 'Evaluation of the Imperatives of Corporate Criminal Liability Law in Nigeria', *ASUU Journal of Humanities A Journal of Research and Development* (2020) Vol 5, No. 1, pp 168-184

[2] Cybercrimes (Prohibition, Prevention, etc.) Act 2015

[3] N C Uzoka, *ibid p 170*

[4] See, for example, the historical reluctance expressed in *Pharmaceutical Society of Great Britain v London and Provincial Supply Association Ltd* (1880) 5 App Cas 857.

environmental, and financial harm, necessitated a legal evolution. Jurisdictions across the common law world have developed distinct jurisprudential pathways to attribute criminal acts and intent to a corporate entity, moving beyond the confines of suing individual directors to targeting the corporation itself as a culpable actor.

Despite the universal recognition of the need to hold corporations criminally accountable, there exists a stark divergence in the legislative foundations, practical application, and overall effectiveness of corporate criminal liability regimes across different jurisdictions, especially in Nigeria. This disparity creates challenges in an increasingly globalized business environment, where multinational corporations operate simultaneously in legal systems with varying standards of accountability. Some systems are criticized for being overly punitive and potentially stifling, while others are seen as ineffective, allowing corporate wrongdoing to go unpunished. A systematic analysis is required to deconstruct these models, evaluate their efficacy, and understand the contextual factors that influence their operation. Consequent upon the prevailing uncertainty and gap in knowledge, this paper set out to fill the subsisting gap by critically assessing the extent of corporate criminal liability in Nigeria in comparison with few countries of the world, identifying and stating the recommendations for an expansive approach. This paper introspects the status of corporate criminal liability, noting its deficiencies in comparison with advanced economies under review.

2. Critique of Corporate Criminal Liability

The United States: The Expansive Vicarious Liability Model

The United States operates the most expansive and prosecution-friendly model of corporate criminal liability. The foundational principle is *respondeat superior* (let the master answer), a doctrine of vicarious liability borrowed from tort law and established in New York Central & Hudson River Railroad Co.'s case[5]. Under this model, a corporation can be held criminally liable for the illegal acts of any of its employees or agents, provided the act was committed within the scope of their employment and with the intent, at least in part, to benefit the corporation[6]. This is a dramatically lower threshold than the identification doctrine which holds only the 'directing mind' accountable. The employee need not be a 'directing mind'; even a mid-level or junior employee's actions can trigger corporate liability. The benefit to the corporation can be indirect and non-pecuniary[7]. This approach is justified by policy considerations of deterrence and control: corporations are seen as best positioned to prevent misconduct through effective compliance programs. Prosecutorial guidelines, notably the Justice Manual's Principles of Federal Prosecution of Business Organizations[8], formalize this by encouraging prosecutors to consider the adequacy of a corporation's pre-existing compliance program and its cooperation during investigation when deciding whether to charge or negotiate a settlement. The primary enforcement tool is the Deferred Prosecution Agreement (DPA) or Non-Prosecution Agreement (NPA). These are negotiated settlements where criminal charges are filed but then suspended (deferred) or not filed (non-prosecution) provided the corporation pays a substantial financial penalty, admits to a statement of facts, cooperates fully, and implements robust compliance reforms under the supervision of a monitor[9]. While criticized as a form of 'private justice' and for allowing corporations to avoid the stigma of a conviction, DPAs are defended as efficient tools that compel structural change and avoid the 'collateral consequences' (example, loss of licenses, shareholder value) that could follow a conviction and harm innocent parties[10].

---

[5] *New York Central & Hudson River Railroad Co. v United States* (1909) 212 U.S. 481

[6] *United States v Hilton Hotels Corp.,* (1972) 467 F.2d 1000 (9th Cir.)

[7] *United States v Potter* (2006) 463 F.3d 9 (1st Cir.)

[8] See the United States Department of Justice, Justice Manual, Title 9, § 9-28.000 et seq., Principles of Federal Prosecution of Business Organizations <https://www.justice.gov/jm/jm-9-28000-principles-federal-prosecution-business-organizations> accessed 9 February 2026

[9] Brandon L. Garrett, *Too Big to Jail: How Prosecutors Compromise with Corporations* (Harvard University Press 2014) pp 1-3

[10] *Ibid*

The United Kingdom: From Identification to a Modern Hybrid Model

The UK's journey reflects a significant evolution from a restrictive to a more sophisticated, multi-layered approach. Historically, UK common law followed the Tesco Supermarkets Ltd v Nattrass[11] case principle, which propounds a strict application of the identification doctrine. Under the identification doctrine, only the acts and mental state of individuals who constitute the 'directing mind and will' of the corporation, typically, very senior officers like directors and possibly senior managers acting as the corporation, could be attributed to the corporation itself. This created a 'directing mind' hurdle that made it difficult to prosecute large, decentralized corporations for crimes requiring *mens rea*. The identification model persisted for a long time in the UK until the Parliament intervened to address this limitation in 2010. The Bribery Act 2010 introduced a groundbreaking innovation known as the 'failure to prevent' offence[12]. Under Section 7, a commercial organization commits an offence if a person associated with it (example, an employee, agent, subsidiary) bribes another person intending to obtain or retain business or a business advantage for the organization. Crucially, it is a strict liability offence for the corporation, which has a full defence if it can prove it had 'adequate procedures' in place designed to prevent bribery. This model flips the prosecutorial burden, incentivizing preventive compliance.

The 'failure to prevent' model has been extended to the criminal facilitation of tax evasion in the Criminal Finances Act 2017[13] and, most recently, to a new offence of 'failure to prevent fraud' under the Economic Crime and Corporate Transparency Act 2023[14]. The 2023 Act also introduces a significant reform to the identification doctrine itself, expanding the 'directing mind' category to include 'senior managers' who play a significant role in decision-making or managing a substantial part of the organization's activities[15]. Thus, the UK now employs a hybrid model, a reformed identification doctrine for core offences, supplemented by specific, strict liability 'failure to prevent' offences for key economic crimes. Like the US, the UK makes extensive use of DPAs, governed by the Crime and Courts Act 2013[16], to resolve corporate criminal cases.

Canada: The Strict Identification Doctrine and 'Partner in Crime' Approach

Canada remains the most conservative of the jurisdictions examined, steadfastly adhering to a strict version of the common law identification doctrine, often called the 'directing mind' test. The seminal Supreme Court of Canada case, Canadian Dredge & Dock Co. v The Queen[17], solidified this approach. For a corporation to possess criminal mens rea, the guilty mind must be that of a person who is the 'directing mind' and who is acting within the scope of their authority, in a manner that furthers the corporation's interests. This test has been criticized for being out of step with modern corporate structures[18]. In response to high-profile corporate scandals, Canada introduced a 'willful blindness' provision in the Criminal Code, Section 22.1[19], but this did not fundamentally alter the doctrine. More impactful was the 2004 amendment introducing Section 22.2[20] of the Criminal Code. This provision creates a statutory basis for corporate liability where a senior officer (a) is a party to the offence, (b) directs other employees to commit the offence, or (c) fails to take reasonable steps to stop an employee from committing the offence, having both the mental intent (mens rea) and being within their scope of authority. While this codifies aspects of the identification doctrine, it does not adopt a vicarious or 'failure to prevent' model. A corporation is held liable not for its own failure as an organization, but because a senior officer, its 'directing mind,' is essentially a 'partner in crime[21].' Canada does not have

[11] *Tesco Supermarkets Ltd v Nattrass* [1972] AC 153.
[12] Bribery Act 2010 (UK), c. 23, s. 7.
[13] Criminal Finances Act 2017 (UK), c. 22, Part 3.
[14] Economic Crime and Corporate Transparency Act 2023 (UK), c. 56, s. 199.
[15] *Ibid*, s. 196
[16] Crime and Courts Act 2013 (UK), c. 22, Schedule 17.
[17] *Canadian Dredge & Dock Co. v The Queen* [1985] 1 SCR 662.
[18] Law Commission of Canada, What is a Crime? Challenges and Alternatives (Discussion Paper, 2003). <https://publications.gc.ca/site/eng/9.686496/publication.html> accessed 9 February 2026
[19] Criminal Code, RSC 1985, c C-46, s. 22.1.
[20] Ibid s. 22.2
[21] Neil B. MacDonald, 'The Cardigan Convict and the Oshawa Orchid Grower: A Critique of Corporate Criminal Liability in Canada' (2013) 59 Criminal Law Quarterly 1.

a formal DPA regime, relying instead on traditional prosecution and, for corruption offences, negotiated 'remediation agreements' under the Criminal Code[22].

Australia: Direct Liability and Vicarious Liability
Australia imposes criminal liability on corporations primarily through two key mechanisms:
Direct Liability (Common Law): The identification doctrine (from *Tesco Supermarkets Ltd v Nattrass*) attributes the mental state (intent, knowledge) of a corporation's 'directing mind and will' (e.g., senior officers, board) to the corporation itself. This is narrow and often difficult to apply. Corporations can also be directly liable for strict and absolute liability offences where no mental state needs to be proven.
Statutory (Vicarious) Liability: Commonwealth: The Criminal Code Act[23] provides the primary framework. Under Division 12, a corporation can be held criminally responsible for the acts of its employees, agents, or officers acting within actual or apparent authority. Under this provision, a corporation may be held criminally responsible where it authorised, permitted, or acquiesced to by a 'high managerial agent' (broadly defined senior person); or attributed to a corporate culture that directed, encouraged, tolerated, or led to the offence; or due to a failure to create and maintain a corporate culture requiring compliance. Australian law holds corporations criminally liable both for the acts of senior individuals and, crucially under statute, for the conduct of broader employees and agents, especially where a deficient corporate culture or systems failure is identified.

Nigeria: An Underdeveloped and Procedurally Challenged Framework
Nigeria's framework for corporate criminal liability is characterized by doctrinal ambiguity and severe procedural constraints. While there are legislative interventions aimed at imputing liability, corporations involved in fraud or other numerous offences many times, escape the rod of justice.

The Rejection of Vicarious Liability: A significant hurdle in Nigerian jurisprudence is the judicial insistence that criminal liability remains personal. Unlike the US model, Nigerian courts have consistently held that a company cannot be held vicariously liable for the acts of its agents. In *Aliyu v. FRN*[24], the Court of Appeal reaffirmed that vicarious liability is a concept confined to the realm of torts, stating that 'I cannot fathom any concept of vicarious liability in criminal responsibility under the Criminal Law of Nigeria as there is none!' This position was further bolstered by the Supreme Court in *PML (Nig) Ltd v. FRN*[25], where it was held that criminal responsibility operates on *mens rea* and is therefore personal, not vicarious.

The Identification Doctrine and CAMA 2020: Historically, Nigeria inherited the 'Identification Doctrine' from English common law. However, its application remained inconsistent until the codification seen in the Companies and Allied Matters Act (CAMA) 2020[26]. Section 65 of CAMA 2020 provides a statutory basis for attribution, stating that the acts of the board of directors, a managing director, or other officers while acting within their authority are the acts of the company itself. While this clarifies who can be the 'directing mind,' it remains a narrow window. As seen in *Pilab Int'l Company (Nig) Ltd v. Kakatar CE Ltd*[27], while a company can be prosecuted for offences requiring mens rea (like conspiracy to defraud), the prosecution must still link the intent to a high-level officer. This 'identification hurdle' makes it nearly impossible to convict large corporations where decisions are diffused across committees rather than held by a single individual.

Specialized Statutes and the 'Failure to Prevent' Gap: There have been piecemeal attempts to create corporate liability through specific statutes: The Advance Fee Fraud Act[28], Section 10 allows for the

[22] Criminal Code, RSC 1985, c C-46, Part XXII.1 (Remediation Agreements).
[23] Criminal Code Act 1995 (Cth) s. 12.
[24] *Aliyu v. FRN* (2025) LPELR-80353(CA)
[25] *PML (Securities) Co. Ltd v. FRN* (2018) LPELR-47993(SC) Per MARY UKAEGO PETER-ODILI, JSC (Pp 68 - 68 Paras C - E), see also A.C.B. v. Okonkwo (1997) 1 NWLR (Pt. 480) 194 at 207
[26] Companies and Allied Matters Act 2020
[27] *Pilab Int'l Company (Nig) Ltd v Kakatar Ce Ltd* (2025) LPELR-81925(CA)
[28] Advance Fee Fraud Act 2006 s 10

prosecution of a body corporate where the offence is committed with the connivance or neglect of a director or manager. The Money Laundering (Prevention and Prohibition) Act[29] Explicitly provides for corporate fines[30] and the possibility of winding up entities involved in money laundering[31]. The Cybercrimes Act[32] represents a slight shift toward a broader model by holding corporations liable for crimes committed for their benefit by employees. Section 20 provides that a body corporate that commits an offence under the Act is liable on conviction to a fine of not less than ₦10,000,000. It also states that any officer of the corporation (example, CEO, director, manager, secretary, or similar officer) at the time of the offence is personally liable on conviction to a term of imprisonment of at least two years, a fine of not less than ₦5,000,000, or both. Importantly, subsection (2) protects individuals who can prove that the offence was committed without their knowledge or that they exercised due diligence to prevent the offence[33]. This section is the principal provision in the Act that establishes corporate criminal liability for cybercrime offences, including situations where employees commit offences in the course of their duties for the benefit of the company. Despite these, Nigeria lacks a comprehensive 'Failure to Prevent' framework. Under current laws, if a mid-level staff member commits a bribe to benefit a Nigerian bank, the bank is often not liable unless a 'senior manager' was directly involved. This contrast is sharp when compared to the UK's Bribery Act or Australia's Corporate Culture model.

Procedural Reforms under ACJA 2015: On the procedural side, the Administration of Criminal Justice Act (ACJA)[34] has attempted to close the 'non-appearance' loophole. Section 478 empowers the court to enter a plea of 'not guilty' on behalf of a corporation that fails to appear, preventing the entity from stalling trial indefinitely. However, these procedural gains are often undermined by a lack of specialized training for prosecutors in tracing corporate 'fault' beyond simple regulatory breaches.

3. Comparative Analysis and Critical Evaluations

Basis of Liability: Attribution vs. Organizational Failure

In US (Vicarious liability), there is attribution of acts of any agent to the corporation. Focus is on the act of the employee and benefit to the corporation and any employee can trigger liability. In UK (Hybrid) there is attribution of acts of the directing mind/senior manager (identification) OR imposes liability for organizational failure to prevent crimes by associated persons. Australia is based on corporate culture which focuses on whether the company's 'ethos' encouraged the crime. Canada use identification model where acts and intent of the directing mind/senior officer are imputed to the corporation. The corporation is liable because its senior officer is culpable. In Nigeria, what is applied mostly identification and Regulatory models. Theoretically identification, but in practice relies on regulatory offences. The corporation's liability is often not for its own failure but for a technical breach or the act of an unidentified high-level agent. The UK's 'failure to prevent' model represents the most significant conceptual shift, creating a direct duty on the corporation as an organization to implement preventive measures. The US model, while vicarious, achieves a similar organizational focus through prosecutorial policy that rewards effective compliance programs.

4. Conclusion and Recommendations

This comparative analysis reveals a clear spectrum of corporate criminal liability regimes. The USA, UK and Australia have developed aggressive and nuanced models that emphasize corporate responsibility as an organization, using a mix of low attribution thresholds, strict liability offences for failure to prevent, and negotiated settlement mechanisms to enforce compliance. Canada maintains a more traditional, restrictive model that focuses on the culpability of senior individuals. Nigeria's system, while theoretically aligned with Commonwealth common law, is practically enfeebled by statutory enactment, procedural rules and enforcement deficits. For Nigeria to build a credible corporate criminal liability framework that can deter

[29] The Money Laundering (Prevention and Prohibition) Act 2022
[30] *Ibid* s 12(4)
[31] *Ibid* s 22(2)
[32] Cybercrimes (Prohibition, Prevention, Etc.) Act, 2015, s 20
[33] *Ibid* s 20(2)
[34] Criminal Justice Act (ACJA) 2015 s 478

misconduct and align with international best practices, particularly as it seeks to attract responsible foreign investment, comprehensive reforms are imperative. The following recommendations are proposed:

i. The National Assembly should enact a distinctive Corporate Crimes and Compliance Act aimed at specifically codifying and modernizing the basis of corporate liability. The Act should introduce a statutory 'failure to prevent' model for core economic crimes (corruption, fraud, money laundering, tax evasion), making the possession of 'adequate procedures' a full defence.
ii. There should be an amendment of ACJA 2015 to include procedural clarity and explicitly state that a corporation can be summoned, arraigned, and tried in its corporate name, and that if it fails to appear or instruct counsel, the trial may proceed in absentia or the court may appoint an *amicus curia* to represent its interests for the purpose of the trial. This would close the current escape hatch.
iii. There is need to expand the plea bargain arrangements to include corporate entities as a tool to resolve complex corporate crimes, especially financial cases, ensure restitution, and mandate independent compliance monitoring.
iv. There is need to overhaul sentencing guidelines to ensure fines are proportionate, deterrent, and based on a percentage of global turnover or the benefit derived from the crime. Introduce provisions for court-ordered compliance remediation and monitoring as part of sentencing.
v. There is need to invest in specialized training for judges of the Federal High Court (which has jurisdiction over such matters) and for prosecutors in the Economic and Financial Crimes Commission (EFCC) and the Independent Corrupt Practices Commission (ICPC) on the complexities of investigating and prosecuting corporate entities.
vi. The government, in conjunction with industry regulators, should issue official guidelines on what constitutes 'adequate procedures' for preventing bribery, fraud, and money laundering, incentivizing businesses to develop robust internal controls.

By adopting a modern, organization-focused model and removing its unique procedural barriers, Nigeria can transition its corporate criminal liability regime from a paper tiger into an effective instrument of accountability and a catalyst for improved corporate governance.